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In the Supreme Court

OF THE

United States

OCTOBER TERM 1953

No. 583

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public corporation, JOHN W. BEARD, E. N. AYER, A. F. MAILLOUX, CHARLES J. JUNG, LLOYD N. WILSON and BYRON L. HAVISIDE,

Petitioners,

vs.

MATTIE BANKS, TOBEY CAIN and JAMES CHARLEY, JR., on behalf of themselves and others similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal of the State of California.

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To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

SUMMARY STATEMENT.

Petitioner is an agency organized to establish and administer permanent low-rent public housing projects in the City and County of San Francisco. (R. 271.) (R. 2.) On May 28, 1942 petitioner adopted a so-called "Neighborhood Pattern Policy", which was successfully attacked below by respondents as being violative of the 14th Amendment. (R. 21.) (R. 268.)

This policy was in two parts: (1) Petitioner should provide housing accommodations for *all* races in the proportion which the number of eligible low-income families of each race bore to the whole; (2) Petitioner should maintain in its projects the racial composition of the neighborhoods wherein the projects are located. There is no evidence in the record of the reasons why this policy was adopted other than those stated in the resolution itself. Referring to the second part above, the resolution recites that petitioner should conform to the established usages, customs and traditions of the community and with a view to the preservation of public peace and good order. (R. 21 and 22.) (R. 268.)

A survey made in 1950 indicated that the needs of white and non-white eligible families were in the ratio of 70% white, 30% non-white. The overall program of petitioner was to provide 5856 units, to be occupied

by 4095 white and 1761 non-white families. This program corresponded to the 70%-30% ratio. At the time the suit was brought, however, some projects had not been constructed, and the ratio of occupancies had not reached 30% for non-white families. (R. 270.) (R. 211-215 incl.—offer of proof.) (R. 218—stipulation.)

Two non-white projects at that time had been constructed and filled. Westside Courts, in a neighborhood predominantly occupied by Negroes, was wholly occupied by families of that race. Ping Yuen, in the midst of San Francisco's famed Chinatown, was wholly occupied by Chinese families. (R. 269.)

Prior to the time the suit was brought, a new project located in the Italian section of the City, North Beach, was ready for occupancy. This project was set aside by petitioner for white families of Italian extraction. But respondents, who are Negroes, applied for admission thereto. Petitioner refused to consider them as proper applicants for this project under its Neighborhood Pattern Policy. Respondents then petitioned the Superior Court of the State of California, in and for the City and County of San Francisco, for mandamus to compel petitioner to consider them as applicants for this and other projects and to declare the Neighborhood Pattern Policy void. (R. 3-6 incl.)

In its answer petitioner alleged that its method of distribution of housing units according to the proportionate needs of racial groups was fair and equitable

and also alleged that separate but equal accommodations had been afforded members of respondents' race. (R. 18.) At the trial respondents *inter alia* produced evidence to show that a Negro who had an eligibility preference could not be admitted to a white project due to the operation of the aforesaid "Neighborhood Policy".

The Superior Court gave judgment for respondents. (R. 32, 33, 34 incl.) It ordered petitioner to admit all qualified applicants to any and all available units subject only to the rules and regulations applicable to all applicants alike and without regard to race or color. (R. 34-35 incl.) The judgment also decreed that the "Neighborhood Pattern Policy" violated the equal protection clause of the 14th Amendment. (R. 34.)

Petitioner appealed the decision of the Superior Court to the District Court of Appeal of the State of California upon the ground, among others, that the Superior Court had not correctly applied the 14th Amendment. (R. 271-272 incl.) The District Court of Appeal, on August 26, 1953, affirmed. (R. 288.) (Opinion of District Court of Appeals, R. 267-288 incl.) Reported in 120 Adv. Cal. App. Reports 1, 260 Pac. 2d 668.

A petition for rehearing was denied by the District Court of Appeal on September 25, 1953. (R. 294.) A petition for hearing by the California Supreme Court was denied by that Court on October 22, 1953. (R. 349.) The decision of the District Court of Appeal of

the State of California is therefore the decision of the highest court of the State of California in which a decision could be had.

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal of the State of California.

JURISDICTIONAL STATEMENT.

The jurisdiction of this court is invoked under Title 28 U.S. Code Section 1257(3).

The petition for the writ of mandamus alleged that the refusal of the Housing Authority to rent plaintiff's accommodations in the North Beach development was solely because of their race or color and that such refusal was a denial of equal protection of the laws and abridged the privileges and immunities clauses. (R. 5.) The defendants demurred to the complaint on the grounds that there is no denial of equal protection if the Separate but Equal Doctrine applies, and that the complaint merely alleged that Negroes were excluded from certain projects but did not allege that separate but substantially equal accommodations had not been provided for Negroes and other racial groups elsewhere. The demurrer was overruled, (R. 15) the trial court declaring in a memorandum opinion that the Separate but Equal Doctrine of *Plessy v. Ferguson*, 163 U.S. 537, had lost its force by reason of recent holdings of this court and that it has no ap-

plication to ownership or occupancy of real property. (R. 12, 13, 14 incl.)

The District Court of Appeal in its opinion held— (R. 267-288 incl.)

(A) that the distribution of public housing on the basis of the proportionate needs of racial groups violated the 14th Amendment, in brief, because (1) the exclusion of respondents from a housing project could not be excused by a policy which included other members of their race in other projects, the rights guaranteed by the 14th Amendment being individual rights; (2) the Separate but Equal Doctrine applies only to a factual situation wherein equal facilities can be given on demand to all members of the discriminated race; (3) the petitioner, by executing a lease with an applicant creates property interests, and racial restrictions upon the acquisition of property like racial zoning laws are unlawful.

(B) that the preservation of a neighborhood pattern by the executive branch is as unlawful as the preservation thereof by legislative zoning laws. The opinion of the District Court of Appeal is reported in 120 Advance California Appellate Reports 1; 260 Pac. 2d 668.

QUESTIONS PRESENTED.

The questions presented by this petition are whether it is a violation of the 14th Amendment to the Constitution of the United States for the Housing Authority of the City and County of San Francisco:

A. To establish a policy of racial segregation in the public low-rent housing accommodations in San Francisco;

B. To allot accommodations equal in quality to each racial group in the proportion which the needs of such racial group bear to the needs of the others;

C. To house members of each racial group in certain neighborhoods so as to maintain the racial composition where the housing project is located.

SPECIFICATION OF ERRORS.

The decision of the District Court of Appeal is contrary to the decisions of the Supreme Court of the United States in *Plessy v. Ferguson,* 163 U.S. 537 and *Gong Lum v. Rice,* 275 U.S. 78 which the Supreme Court refused to reconsider in *Sweatt v. Painter,* 339 U. S. 629, and involves a federal question of substance.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The Supreme Court of the United States has established and consistently followed the doctrine that the 14th Amendment guarantees equal treatment but does not require identical treatment, and that the segregation of racial groups does not violate the 14th Amendment provided that separate but substantially equal treatment is accorded each racial group.

The said District Court of Appeal in holding that petitioner's "Neighborhood Pattern Policy" violated the 14th Amendment misapplied the decisions of this Court, including *Plessy v. Ferguson,* 163 U.S. 537; *Mitchell v. U. S.,* 313 U.S. 80; *Missouri ex rel. Gaines v. Canada,* 305 U.S. 337; *Henderson v. U. S.,* 339 U.S. 816; *Buchanan v. Warley,* 245 U.S. 60; *Shelley v. Kraemer,* 334 U.S. 1.

The decision of the California District Court of Appeal conflicts with the decisions of the United States District Court for Pennsylvania in *Favors v. Randall* (1941, D.C. Pa.), 40 F. Supp. 743, and of the following state courts in *Denard v. Housing Authority* (1941), 203 Ark. 1050, and *Housing Authority v. Higginbotham* (1940, Tex. Civ. App.), 143 S.W. 2d 95.

The District Court of Appeal of California in its decision has erroneously held that the "separate but equal" doctrine does not apply if all facilities provided for one racial group are filled, and that if they are filled it is the same *as if no facilities whatever were provided* for that group.

In discussing *Plessy v. Ferguson* the District Court said:

> "Those were the facts. Obviously they did not present the question whether there would have been compliance with the Louisiana Statute and the Fourteenth Amendment if the railway company had refused admission and passage to petitioner because (1) that particular train had no

coach or compartment set aside for his race, or, (2) the coach or compartment so set aside was already fully occupied by members of his race. *It is an essentially similar lack of accommodations which appellants furnish under their proportionate needs and neighborhood pattern policies.* * * *" (Emphasis supplied.)

The Court then quotes extensively from *Mitchell v. U. S.*, 313 U.S. 80, where a Negro was forced to leave a first-class car and to ride in a *second-class car,* and *McCabe v. Atchison,* 235 U.S. 151, where the Oklahoma statute permitted railway companies to provide sleeping cars, dining cars and chair cars *exclusively for white persons with no similar accommodations for Negroes.*

Obviously the cases cited, where inferior accommodations or no accommodations were offered Negroes, have nothing to do with the present case where, there being a shortage of accommodations, and all accommodations being equal, they were divided among the racial groups in proportion to the size of each racial group.

In the *McCabe* case and the *Mitchell* case the argument was made that the slight demand by *Negroes* for first-class accommodations justified the failure to provide any first-class accommodations. In response to such argument the Supreme Court of the United States said:

"It is the individual we said who is entitled to the equal protection of the laws—not merely

a group of individuals or a body of persons according to their numbers."

The District Court of Appeal took this language from these cases where no *first-class accommodations* were offered Negroes and applied it to a situation where, all accommodations being equal, they were divided among the several racial groups in accordance with their size and concluded that such action was a violation of the 14th Amendment.

Indeed, the District Court of Appeal declared that the United States District Court had incorrectly applied the 14th Amendment in *Favors v. Randall,* 40 Fed. Supp. 743, saying:

> "Although the opinion indicates the court recognized the basic requirement of equality of treatment it does not clearly indicate that the court's attention was pointedly directed to the fact that the rights of 'persons', not groups, were involved under the 14th Amendment. The rationale of the decision seems to be that upon the basis of the facts before it the court felt that the questioned method of selection would work out equitably between the two groups, white and colored; indeed, *that the colored group would obtain more housing units than its proportionate needs called for.* That, as we have seen, is not the kind of 'equal' treatment which the 14th Amendment requires." (Emphasis supplied.)

Thus, even though the racial group receives *more* than its proportionate share of available accommodations, the District Court of Appeal reasons that the

14th Amendment has been violated by reason of segregation by racial groups.

The District Court of Appeal, in its opinion, declares:

> "Appellants by reason of their proportionate racial needs and neighborhood racial pattern policies are not furnishing and have prevented themselves from furnishing housing accommodations to persons of low income 'upon the basis of equality of right'."

All accommodations being substantially equal, if the Court had found any unfairness in the allotment of accommodations to any racial group, it would have been a simple matter to order the Housing Authority to allot accommodations to each racial group in such proportions as to the Court seemed just and proper.

The District Court of Appeal, however, not only failed to indicate *what* proportions would be appropriate but its opinion plainly indicates that the segregation policy of the Housing Authority would violate the 14th Amendment *no matter what proportion* of the accommodations is allotted to each racial group.

In carrying out this reasoning, the District Court of Appeal affirmed the judgment below *abolishing all segregation* and declaring that the policy of refusing to rent certain units to Negroes because of the race or color of such applicants, whether pursuant to the neighborhood pattern policy or for any reason whatsoever, is in violation of the equal protection clause of the 14th Amendment.

Thus the District Court of Appeal in effect declares that *any* segregation is *per se* a violation of the 14th Amendment.

This is an interpretation and application of the 14th Amendment contrary to that of the Supreme Court of the United States and a repudiation of the "separate but equal" doctrine established by that court.

To support its conclusions, the District Court of Appeal relies on a line of decisions of the Supreme Court of the United States which are not in point because the factual situations are entirely different.

In *Plessy v. Ferguson,* 163 U.S. 537, and the cases following it, the Supreme Court declared that if the State or a subdivision thereof offers any facilities on the basis of a segregation of races, the 14th Amendment requires that separate but equal facilities in every respect should be offered to each racial group.

In the other line of cases, beginning with *Buchanan v. Warley,* 245 U.S. 60, and including *Harmon v. Tyler,* 273 U.S. 668; *City of Richmond v. Deans,* 281 U.S. 704, and *Shelley v. Kraemer,* 334 U.S. 1, the Supreme Court has held that where a person has acquired a right to own or occupy property by voluntary contractual arrangement with another, it is a denial of the equal protection of the laws for a State or political subdivision, either by legislation or by judicial enforcement of a restrictive covenant, to prevent such person from owning or occupying such property solely because of his race.

As was said in *Denard v. Housing Authority of Ft. Smith,* 159 S.W. 2d 764, "such cases as Buchanan v. Warley are not in point" (in connection with the separate but equal doctrine).

If they had overruled *Plessy v. Ferguson* and the cases following it, it would be unnecessary for this Court to consider the segregation cases it has before it at this time.

However, the reliance by the District Court of Appeal on these cases is additional evidence, if any be needed, that that court has misunderstood and misapplied the decisions of this Court construing and enforcing the 14th Amendment of the Constitution of the United States.

The determination of the questions presented should involve the determination of the following issues of national importance and interest:

a. In cases involving the dispensation of governmental favors by administrative agencies under administrative regulations which involve classification by race or nationality, what is the test of the validity of such regulations under the Equal Protection Clause of the 14th Amendment?

1. Is classification by race or nationality *per se* unlawful?

2. If it is not, is classification by race or nationality *per se* unlawful unless the "Separate but Equal Doctrine" applies?

3. Or, is the test the conventional one of reasonableness?

b. If the "Separate but Equal Doctrine" alone justifies classification by race, can the doctrine

apply where a limited number of equal facilities is distributed by race, resulting in some members of each race receiving no facilities?

c. If the test is reasonableness, does the ordinary presumption of validity apply, namely, "If any state of facts can reasonably be conceived to sustain the classification, there is a presumption of the existence of that state of facts. He who assails the differentiation has the burden of showing it to be purely arbitrary." *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79.

d. Is the opportunity to lease a public housing unit such an interest in property as to be protected by the 14th Amendment?

Wherefore, your petitioner prays that a writ of certiorari issue to the District Court of Appeal of the State of California, First Appellate District, Division One, to the end that the errors aforesaid may be corrected by this Court.

Dated, San Francisco, California,
February 5, 1954.

Respectfully submitted,
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RESPONDENTS' BRIEF IN ANSWER TO PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal of the State of California.

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To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

THE QUESTION PRESENTED.

The question presented is whether or not the appropriate agency of state government, vested with statutory power to control admissions to public housing developments, can classify applicants for such housing on the basis of race and make the race of the applicant a factor in determining eligibility for available public housing units.

STATEMENT OF THE CASE.

Petitioner Housing Authority of the City and County of San Francisco is a "body corporate and politic, exercising public and essential governmental functions",[1] created by the State of California. As such it maintains and administers seven permanent low rent housing developments. By Resolution 287, petitioner established a regulation that it would "provide housing accommodatins for all races *in the proportion which the number of low income families otherwise unable to obtain decent, safe, and sanitary dwellings in each racial group, bears to one another.*" (R. 22.) (Italics ours.) That same Resolution provided further that "In the selection of tenants for the projects of this Authority, this Authority shall act with reference to the established usages, customs and traditions of the community and with a view to the preservation of public peace and good order and shall

[1]California Health and Safety Code, Chapter 1, Part 2, Division 24, Sections 34200-34368.

not insofar as possible enforce the commingling of the races, *but shall insofar as possible maintain and preserve the same racial composition which exists in the neighborhood where a project is located.*" (R. 22.) (Italics ours.)

Pursuant to the policy enunciated in the Resolution, Petitioner excluded Negroes from all but one of its permanent low rent developments. It was established at the trial that a Negro who had an eligibility preference could not be admitted to "white projects", solely because of race. (R. 29.)

Respondents in a class action sought and secured mandamus in the State court ordering Petitioner to admit Respondents and all qualified applicants to any and all available housing units subject only to rules and regulations applicable to all applicants alike and without regard to race or color.

The District Court of Appeal sustained the trial court epitomizing its holding in this paragraph:

> "The arbitrary character of such a method of selection (That prescribed by Resolution 287) is too obvious to require elaboration. It bears no relation to eligibility of the individual. It is really an arbitrary method of exclusion, a guaranty of inequality of treatment of eligible 'persons'." (R. 273.)

The rationale of the decision of the District Court of Appeal is that the racial segregation policy of Petitioners denies equal protection of the laws, as guar-

anteed by the Fourteenth Amendment, to Respondents and to the members of the class represented by them.

The Supreme Court of California denied a petition to hear the case after decision by the District Court of Appeal. (R. 349.)

SUMMARY OF ARGUMENT.

I. *Plessy v. Ferguson,* 163 U.S. 537 was incorrectly decided and should be overruled.

II. The decision of the Court below is correct on the ground that the Separate But Equal rule, no matter what vitality it may have in other respects, is not applicable in the field of housing.

III. Assuming *arguendo* that the Separate But Equal rule does have vitality in the field of housing it is not applicable here because it can never be applied in such a manner as to guarantee the individual that equality of treatment required by the command of the Fourteenth Amendment.

ARGUMENT.

I. THE SEPARATE BUT EQUAL DOCTRINE SHOULD BE REPUDIATED.

Respondents submit that *Plessy v. Ferguson* was incorrectly decided and should be overruled. In support of this contention, we adopt the exhaustive ar-

guments presented by Appellants in the Briefs filed in *Oliver Brown v. Board of Education of Topeka,* and the companion cases, Numbers 1, 2, 4 and 10, October Term, 1953.

II. THE SEPARATE BUT EQUAL RULE HAS NO APPLICABILITY IN THE FIELD OF HOUSING.

This court in 1917 pointed out the limitations of the Separate But Equal rule in the first case it considered involving an attempt to impose racial residential segregation. After reviewing the acceptance which the doctrine had received, this Court held that it did not permit state enforced segregation by zoning ordinances.

Buchanan v. Warley, 245 U.S. 60.

It adhered to that view in subsequent cases involving ingenious methods of evading the impact of the *Buchanan* case.

See:

Harmon v. Tyler, 273 U.S. 668;
City of Richmond v. Dean, 281 U.S. 704;
City of Birmingham v. Monk, 185 Fed. 2d 859 (cert. denied 341 U.S. 940).

Judicial enforcement of race restrictive covenants was interdicted in 1948.

Shelley v. Kraemer, 334 U.S. 1.

The attempt to escape the stricture of the *Shelley* case through the device of damage suits against sel-

lers of race restricted real property to Negroes failed in 1953.

Barrows v. Jackson, 346 U.S. 249.

Thus this Court has found the Fourteenth Amendment an effective shield against racial residential segregation when that end was sought to be achieved through legislative and judicial means.

The variant here is that such segregation is sought to be reached through administrative fiat. The executive branch of government is not immunized from the requirements of the Fourteenth Amendment.

> "The provisions of the (Fourteenth) Amendment * * * are addressed to every person, natural or judicial, who is a repository of state power."
>
> *Home Tel. & Tel. Etc. v. Los Angeles,* 227 U.S. 278, 286.

There is a deadly parallel between what is sought to be achieved here, and the methods prescribed for that achievement, and the situation in *Buchanan v. Warley.*

Here Petitioner, an administrative agency, seeks to distribute available housing on the basis of proportionate racial needs; there the legislative branch of city government sought to stabilize proportionate racial use.

Here Petitioner seeks to justify its racial segregation policy on its claimed desire to preserve "public peace and good order"; there the same claim was made.

Here Petitioner seeks to maintain "the same racial composition which exists in the neighborhood"; there the same profession was avowed by the city council.

This court found none of these professed aims or objectives consonant with the purposes of the Fourteenth Amendment; they are equally lacking in consonance with the purposes of the Amendment here.

Racial residential segregation can no more be squared with the Amendment when it is sought to be imposed by executive device than it can through legislative enactment.

The decisions of this Court involving racial residential segregation, beginning with the *Buchanan* case in 1917 and ending with the *Barrows* case in 1953 support the decision of the court below.

III. THE REQUIREMENTS OF EQUAL PROTECTION CANNOT BE MET UNDER PETITIONER'S RULES.

Even if we assume *arguendo* that the Separate But Equal rule has vitality in the field of housing, under some circumstances, the fact remains that the equality assumed capable of achievement under that doctrine is impossible of attainment in the case of public housing.

Public housing presents a situation analogous to that presented in the railroad cases decided by this court.

In *Mitchell v. U. S.*, 313 U.S. 80, this court held that the right to equality of access to railroad accom-

modations was a personal one and the slight demand of members of one ethnic group for the same would not excuse a failure to provide accommodations for individuals of that group seeking such accommodations.

In *Henderson v. United States,* 339 U.S. 816, the Southern Railway by regulation had set aside one table of four seats in each of its dining cars for the exclusive use of Negro passengers and ten tables of four seats each for the exclusive use of white passengers. This allocation was based upon the proportionate demand for these facilities by Negroes and whites.

Indeed, a survey had disclosed that Negro diners constituted but 4% of the demand whereas the four seats allotted to them exceeded 9% of the total seating capacity.

This court, by its unanimous decision, struck down the regulation as constituting an undue or unreasonable prejudice or disadvantage in violation of Section 3 (1) of the Interstate Commerce Act.

And while it is true that the *Henderson* case was not decided under the Fourteenth Amendment, the attempted justification of the regulation was based upon an analogy with the Separate But Equal doctrine enunciated in the *Plessy* case.

There is no distinction between what the railroad attempted in the *Henderson* case and what Petitioner seeks to do in the instant case. The imposition of a racial quota system by a state agency in the allocation of public housing is as offensive to the Four-

teenth Amendment as the imposition of a racial quota system in the allocation of dining car facilities is to the Interstate Commerce Act.

In the nature of things the supply of public low rent housing is limited and the rationale of the Henderson decision is clearly applicable. When the housing allocated to Negroes as a group is fully occupied, subsequent Negro applicants are denied accommodations, regardless of how many vacancies may exist. This denial is based solely upon race and deprives such applicants of the equal protection of the laws.

CONCLUSION.

It is true, as pointed out by Petitioner, that there are conflicting decisions of the United States District Courts and some of the State courts on the question presented by the instant petition.

Favors v. Randall (1941, D.C. Pa.), 40 F. Supp. 743 is in direct conflict with the decision of the California District Court of Appeal in the instant case.

The following cases lend support to the proposition urged by Petitioners.

Denard v. Housing Authority (1941), 203 Ark. 1050;

Housing Authority of the City of Dallas v. Higginbotham (1940 Tex. Civ. App.), 143 S.W. 2d 95;

Heyward et al. v. Public Housing Administration, Number 11865, United States Court of

Appeals for the District of Columbia (on Appeal from the Federal District Court of the District of Columbia).

The following cases are in accord with the decision of the District Court of Appeal.

Seawell v. MacWithey (1949 N.J. Chancery Div.), 63 A. 2d 542;

Jones, et al. v. The City of Hamtramck, Civil Action Number 12307, United States District Court, Eastern District of Michigan, Southern Division;

Seawell v. MacWithey (1949), 2 N.J. 563, 67 A. 2d 309;

Vann v. Toledo Metropolitan Housing Authority (1953, D.C. Ohio), 113 Fed. Supp. 21;

Woodridge et al. v. The Housing Authority of Evansville, Civil Number 618 United States District Court, Southern District of Indiana, Evansville Division.

In addition there are cases pending in Federal District Courts in Detroit, Michigan, Saint Louis, Missouri and in the proper State Court in Fresno, California involving the same issues presented by this petition.

In the absence of a direct holding by this court on the question, additional litigation may be anticipated, for public low rent housing exists throughout the nation and has achieved a significant place in the total housing picture. The efficient and just administration of this housing program requires that the question be finally resolved.

There is no uniformity in rules of local public housing authorities in respect of racial segregation. Such segregation is required by the majority of authorities and forbidden by many others. In the absence of a clear and decisive holding by this Court, this chaotic and undesirable pattern of racial segregation in public housing will continue. Its resolution is a matter of high public interest.

Respondents, therefore, agree that the issue needs clarification in order to resolve with finality the conflict existing in the decisions in the various jurisdictions. However, in view of the prior decisions of this court clearly disposing of the question presented, we respectfully urge that certiorari be granted and the decision of the court below be affirmed without further briefs or argument.

Dated, March 3, 1954.

Respectfully submitted,

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